

Eric H. Gibbs (State Bar No. 178658)
Amy M. Zeman (State Bar No. 273100)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, CA 94612
Tel: (510) 350-9700
Fax: (510) 350-9701
ehg@classlawgroup.com
amz@classlawgroup.com

Dena C. Sharp (State Bar No. 245869)
Adam E. Polk (State Bar No. 273000)
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Tel: (415) 981-4800
Fax: (415) 981-4846
dsharp@girardsharp.com
apolk@girardsharp.com

Adam B. Wolf (State Bar No. 215914)
Tracey B. Cowan (State Bar No. 250053)
PEIFFER WOLF CARR KANE & CONWAY,
APLC
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel: (415) 766-3545
Fax: (415) 402-0058
awolf@peifferwolf.com
tcowan@peifferwolf.com

Plaintiffs' counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE PACIFIC FERTILITY CENTER
LITIGATION

This Document Relates to:
No. 3:18-cv-01586
(A.B., C.D., E.F., G.H., and I.J.)

Master Case No. 3:18-cv-01586-JSC

**DECLARATION OF AMY M. ZEMAN
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO MOTIONS TO
EXCLUDE KASBEKAR, WININGER
AND GRILL AND TO MOTION FOR
SUMMARY JUDGMENT**

Date: March 4, 2021
Time: 9:00 a.m.
Judge: Hon. Jacqueline S. Corley
Place: Courtroom F, 15th Floor

1 1. I am a partner at the law firm Gibbs Law Group LLP, counsel for Plaintiffs in the above-
2 captioned action, and submit this declaration in support of Plaintiffs' oppositions to Defendant Chart's
3 motions to exclude expert testimony and motion for summary judgment.

4 2. Tank 4 was inspected and tested according to agreed protocols on September 25, 2018,
5 September 30-October 1, 2019, and March 11-13, 2020 at Exponent, Inc. in Menlo Park, California. I
6 personally attended all three inspection and testing sessions for their full duration, accompanied by
7 Plaintiffs' forensic engineer, Dr. Anand Kasbekar. Counsel and experts were also present for Chart Inc.,
8 Prelude Fertility, Inc., Pacific MSO, LLC, Pacific Fertility Center, and plaintiffs pursuing claims in
9 state court. I witnessed the visual exam, leak testing, and disassembly of Tank 4, discovery of the crack
10 at the fill port, microscopic examination of the fill port and weld, and the extensive photographic and
11 videographic documentation of the process by the attorneys and consultants present.

12 3. Attached as **Exhibit 1** is Anand Kasbekar's November 6, 2020 expert report, as
13 amended on November 30, 2020.

14 4. Attached as **Exhibit 2** is Eldon Leaphart's expert report, which was delivered to
15 Plaintiffs' counsel on November 6, 2020.

16 5. Attached as **Exhibit 3** are excerpts from John Cauthen's deposition taken on November
17 24, 2020.

18 6. Attached as **Exhibit 4** is data downloaded from Tank 4's TEC 3000 controller and
19 produced by Pacific MSO in this action bearing the Bates stamp MSO000217-226.

20 7. Attached as **Exhibit 5** is Franklin Miller's supplemental expert report, which superseded
21 his original November 6, 2020 report and was delivered to Plaintiffs' counsel on November 20, 2020.

22 8. Attached as **Exhibit 6** is Ronald Parrington's expert report, which was delivered to
23 Plaintiffs' counsel on November 6, 2020.

24 9. Attached as **Exhibit 7** are excerpts from Anand Kasbekar's deposition taken on
25 November 25, 2020.

26 10. Attached as **Exhibit 8** are excerpts from Anand Kasbekar's deposition taken on
27 December 13, 2019.

1 11. Attached as **Exhibit 9** are excerpts from Ronald Parrington’s deposition taken on
2 November 16, 2020.

3 12. Attached as **Exhibit 10** is the assembly drawing for Chart’s MVE 808 model tank,
4 produced by Chart in this action bearing the Bates stamp CHART070444.

5 13. Attached as **Exhibit 11** is the “Design Failure Mode, Effects and Criticality Analysis”
6 produced by Chart in this action bearing the Bates number CHART001432.

7 14. Attached as **Exhibit 12** is Ronald Parrington’s rebuttal expert report, which was
8 delivered to Plaintiffs’ counsel on December 4, 2020.

9 15. Attached as **Exhibit 13** is Anand Kasbekar’s December 4, 2020 rebuttal expert report.

10 16. Attached as **Exhibit 14** is David Wininger’s November 6, 2020 expert report.

11 17. Attached as **Exhibit 15** are excerpts from David Wininger’s deposition taken on
12 November 30, 2020.

13 18. Attached as **Exhibit 16** are excerpts from Grace Centola’s deposition taken on
14 November 23, 2020.

15 19. Attached as **Exhibit 17** is Elizabeth Grill’s November 6, 2020 expert report.

16 20. Attached as **Exhibit 18** are excerpts from Angela Lawson’s deposition taken on
17 December 11, 2020.

18 21. Attached as **Exhibit 19** are excerpts from Elizabeth Grill’s deposition taken on
19 November 18, 2020.

20 22. Attached as **Exhibit 20** is a copy of the article titled *MIT Cryogenic Engineering*
21 *Laboratory Makes a New Type of Ice Cream that goes ‘Woof’ on Your Tongue.*

22 23. Attached as **Exhibit 21** is an email exchange produced by Pacific MSO in this action
23 bearing the Bates stamp MSO024063-64.

24 24. Attached as **Exhibit 22** are excerpts from Franklin Miller’s deposition taken on
25 December 1, 2020.

26 25. Attached as **Exhibit 23** are excerpts from Anand Kasbekar’s deposition taken on
27 December 15, 2020.

26. Attached as **Exhibit 24** is a copy of my email serving Chart with copies of Plaintiffs' rebuttal expert reports on December 4, 2020.

27. Attached as **Exhibit 25** is the Medical Device Characteristics tab associated with Chart's "Design Failure Mode, Effects and Criticality Analysis" produced by Chart in this action bearing the Bates number CHART001432.

28. Attached as **Exhibit 26** is the Declaration of David Wininger, executed on January 28, 2021.

29. Attached as **Exhibit 27** is a letter produced by Chart in this action bearing the Bates stamp CHART050770.

30. Attached as **Exhibit 28** is Angela Lawson's rebuttal expert report, which was delivered to Plaintiffs' counsel on December 4, 2020.

31. Attached as **Exhibit 29** are excerpts from Jean Popwell's deposition taken on September 2, 2020.

32. Attached as **Exhibit 30** are excerpts from Pacific MSO and Joseph Conaghan's deposition taken on September 9, 2020.

33. Attached as **Exhibit 31** is an article titled *A Prospective Study of Depression and Anxiety in Female Fertility Preservation and Infertility Patients* by A. Lawson et al., published in November 2014.

34. Attached as **Exhibit 32** are excerpts from Pacific MSO and Joseph Conaghan's deposition taken on October 9, 2019.

35. Attached as **Exhibit 33** are excerpts from Pacific MSO and Aldon Romney's deposition taken on September 10, 2019.

36. Attached as **Exhibit 34** is a letter to the College of American Pathologists produced by Pacific MSO in this action bearing the Bates stamp MSO001984-1991.

37. Attached as **Exhibit 35** are excerpts from Chart and Jeff Brook's deposition taken on January 23, 2020.

38. Attached as **Exhibit 36** is the Risk Analysis tab associated with Chart's "Design Failure Mode, Effects and Criticality Analysis" produced by Chart in this action bearing the Bates number CHART001432.

39. Attached as **Exhibit 37** is the Reflections Summary Report produced by Pacific MSO in this action bearing the Bates stamp MSO000310-363.

40. Attached as **Exhibit 38** are Chart's responses to Plaintiffs' Fourth Set of Requests for Admission, which were delivered to Plaintiffs' counsel on August 25, 2020.

41. Attached as **Exhibit 39** are excerpts from Praxair's deposition taken on October 4, 2019.

42. Attached as **Exhibit 40** is the MVE Cryopreservation for Life Science product catalog produced by Chart in this action bearing the Bates stamp CHART000007-57.

43. Attached as **Exhibit 41** are excerpts from Justin Junnier's deposition taken on January 14, 2020.

44. Attached as **Exhibit 42** is an email exchange between Chart field service engineers produced by Chart in this action bearing the Bates stamp CHART034331-33.

45. Attached as **Exhibit 43** is an email exchange produced by Chart in this action bearing the Bates stamp CHART051322-30.

46. Attached as **Exhibit 44** is an email exchange produced by Chart in this action bearing the Bates stamp CHART062204-13.

47. Attached as **Exhibit 45** is an email exchange produced by Chart in this action bearing the Bates stamp CHART070695-701.

48. Attached as **Exhibit 46** an email exchange produced by Chart in this action bearing the Bates stamp CHART008310-20.

49. Attached as **Exhibit 47** are Chart's responses to Plaintiffs' Sixth Set of Interrogatories, which were delivered to Plaintiffs' counsel on August 25, 2020.

50. Attached as **Exhibit 48** are excerpts from Keith Gustafson's deposition taken on February 6, 2020.

51. Attached as **Exhibit 49** is Grace Centola's supplemental expert report, which was delivered to Plaintiffs' counsel on November 20, 2020.

52. Attached as **Exhibit 50** are excerpts from Ramon Gonzalez's deposition taken on February 18, 2020.

53. Attached as **Exhibit 51** is an email exchange produced by Chart in this action bearing the Bates stamp CHART004576-79.

54. Attached as **Exhibit 52** are excerpts from Chart and Frank Bies's deposition taken on September 18, 2019.

55. Attached as **Exhibit 53** are excerpts from the Tank 4 controller data produced by Chart in this action bearing the Bates stamp CHART070093.

56. Attached as **Exhibit 54** is an email exchange produced by Extron in this action bearing the Bates stamp EXTRON-000225-30.

57. Attached as **Exhibit 55** is an email exchange produced by Chart in this action bearing the Bates stamp CHART033664-65.

58. Attached as **Exhibit 56** is an email exchange produced by Chart in this action bearing the Bates stamp CHART008978-79.

59. Attached as **Exhibit 57** is an email exchange produced by Chart in this action bearing the Bates stamp CHART004150-51.

60. Attached as **Exhibit 58** is an email exchange produced by Chart in this action bearing the Bates stamp CHART017944-47.

61. Attached as **Exhibit 59** is an email exchange produced by Chart in this action bearing the Bates stamp CHART038721-25.

62. Attached as **Exhibit 60** is an email exchange produced by Chart in this action bearing the Bates stamp CHART002854-55.

63. Attached as **Exhibit 61** are excerpts from Brendon Wade's deposition taken February 20, 2020.

64. Attached as **Exhibit 62** is an email exchange produced by Chart in this action bearing the Bates stamp CHART028403-5.

65. Attached as **Exhibit 63** is an email exchange produced by Chart in this action bearing the Bates stamp CHART020048-53.

1 66. Attached as **Exhibit 64** is an email exchange produced by Chart in this action bearing
2 the Bates stamp CHART007923-25.

3 67. Attached as **Exhibit 65** is Nicholas Jewell's November 6, 2020 expert report.

4 68. Attached as **Exhibit 66** are excerpts from Carl Herbert's deposition taken on October 1,
5 2019.

6 69. Attached as **Exhibit 67** are excerpts from Stephen Somkuti's deposition taken on
7 November 15, 2019.

8 70. Attached as **Exhibit 68** is Stephen Somkuti's November 6, 2020 expert report.

9 71. Attached as **Exhibit 69** is John Cauthen's expert report, which was delivered to
10 Plaintiffs' counsel on November 6, 2020.

11 72. Attached as **Exhibit 70** are excerpts from Buster Ingram's deposition taken October 5,
12 2020.

13 73. Attached as **Exhibit 71** is the February 2017 edition of PFC's Fertility Flash newsletter,
14 produced by MSO in this action bearing the Bates stamp MSO018818-21.

15 74. Attached as **Exhibit 72** is a printout of the PFC website section titled "Sperm, Egg, and
16 Embryo Freezing," produced by Plaintiffs A.B. and C.D. in this action bearing the Bates stamp PLTF-
17 ABCD-001031-36.

18 75. Attached as **Exhibit 73** are excerpts from Pacific MSO and Joseph Conaghan's
19 deposition taken on November 13, 2020.

20 76. Attached as **Exhibit 74** are excerpts from Eldon Leaphart's deposition taken on
21 November 18, 2020.

22 77. Attached as **Exhibit 75** is an email exchange produced by Chart in this action bearing
23 the Bates stamp CHART015541-43.

24 78. Attached as **Exhibit 76** is an email exchange produced by Chart in this action bearing
25 the Bates stamp CHART058287-93.

26 79. Attached as **Exhibit 77** is an Excel report produced by Extron in this action bearing the
27 Bates stamp EXTRON-000223.

80. Attached as **Exhibit 78** is an email from Chart Field Service engineer Brendon Wade produced by Chart in this action bearing the Bates stamp CHART031817.

81. Attached as **Exhibit 79** is an informed consent template produced by PFC in this action bearing the Bates stamp PFC_000027-36.

82. Attached as **Exhibit 80** are the responses of Plaintiff A.B. to Chart's interrogatories, served on Chart on November 7, 2019.

83. Attached as **Exhibit 81** are the responses of Plaintiff C.D. to Chart's interrogatories, served on Chart on November 7, 2019.

84. Attached as **Exhibit 82** are the responses of Plaintiff E.F. to Chart's interrogatories, served on Chart on November 7, 2019.

85. Attached as **Exhibit 83** are the responses of Plaintiff G.H. to Chart's interrogatories, served on Chart on November 7, 2019.

86. Attached as **Exhibit 84** are the responses of Plaintiff I.J. to Chart's interrogatories, served on Chart on November 7, 2019.

87. Attached as **Exhibit 85** is Nicholas Jewell's October 15, 2019 expert report.

Dated: January 29, 2021

Respectfully submitted,

By: /s/ Amy M. Zeman

Eric H. Gibbs (State Bar No. 178658)
Amy M. Zeman (State Bar No. 273100)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, CA 94612
Tel: (510) 350-9700
Fax: (510) 350-9701
ehg@classlawgroup.com
amz@classlawgroup.com

Dena C. Sharp (State Bar No. 245869)
Adam E. Polk (State Bar No. 273000)
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108

Tel: (415) 981-4800
Fax: (415) 981-4846
dsharp@girardsharp.com
apolk@girardsharp.com

Adam B. Wolf (State Bar No. 215914)
Tracey B. Cowan (State Bar No. 250053)
**PEIFFER WOLF CARR KANE &
CONWAY, APLC**
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel: (415) 766-3545
Fax: (415) 402-0058
awolf@peifferwolf.com
tcowan@peifferwolf.com

Plaintiffs' Counsel